

HOUSE No. 1038

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the Massachusetts pregnant workers fairness act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>

<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Carlos González</i>	<i>10th Hampden</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Joan Meschino</i>	<i>3rd Plymouth</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>

<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Bud Williams</i>	<i>11th Hampden</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Juana B. Matias</i>	<i>16th Essex</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>William Driscoll</i>	<i>7th Norfolk</i>

<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>
<i>Kate D. Campanale</i>	<i>17th Worcester</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>
<i>Gerard Cassidy</i>	<i>9th Plymouth</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>

HOUSE No. 1038

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 1038) of David M. Rogers and others relative to protecting pregnant workers from discrimination in the workplace. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act establishing the Massachusetts pregnant workers fairness act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 151B of the General Laws is hereby amended
2 by striking out, in line 5, the word “or” and inserting, in line 6, after the words “ancestry
3 of any individual”, the following words:-
4 or pregnancy, or a related condition, including, but not limited to, the need to
5 express breast milk for a nursing child.

6 SECTION 2. Said section 4 is hereby amended by inserting after subsection 1D
7 the following subsection:-

8 1E. (a) For an employer to deny reasonable accommodations for any condition
9 of an employee related to pregnancy or related conditions if the employee so requests,

10 unless the employer can demonstrate that the accommodation would impose an undue
11 hardship on the employer's program, enterprise, or business. It shall also be an unlawful
12 practice under this subsection to:

13 (1) take adverse action against an employee who requests or uses a reasonable
14 accommodation in terms, conditions or privileges of employment, including, but not
15 limited to, failing to reinstate the employee to her original job or to an equivalent position
16 with equivalent pay and accumulated seniority, retirement, fringe benefits and other
17 applicable service credits when her need for reasonable accommodations ceases;

18 (2) deny employment opportunities to a employee, if such denial is based on the
19 need of the employer to make reasonable accommodations to the known conditions
20 related to the pregnancy or related conditions of the employee;

21 (3) require an employee affected by pregnancy or related conditions to accept an
22 accommodation that such employee chooses not to accept, if such an accommodation is
23 unnecessary to enable the employee to perform the essential functions of her job;

24 (4) require an employee to take leave if another reasonable accommodation can
25 be provided to the known conditions related to the pregnancy or related conditions of an
26 employee without undue hardship to the employer;

27 (5) refuse to hire a person who is affected by pregnancy or a related condition,
28 capable of performing the essential functions of the position involved with reasonable
29 accommodation, unless the employer can demonstrate that the accommodation would
30 impose an undue hardship on the employer's program, enterprise or business.

31 (b) For the purposes of this subsection:

32 (1) The term "reasonable accommodations" may include, but not be limited to:
33 more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or
34 without pay, acquisition or modification of equipment, seating, temporary transfer to a
35 less strenuous or hazardous position, job restructuring, light duty, break time and private
36 non-bathroom space for expressing breast milk, assistance with manual labor, or
37 modified work schedules; and provided further, that no employer shall be required to
38 discharge any employee, transfer any employee with more seniority, or promote any
39 employee who is not qualified to perform the job. An employee not able to perform the
40 essential functions, with or without reasonable accommodation may be considered not
41 "qualified".

42 (2) The term "related conditions" shall include, but not be limited to, lactation or
43 the need to express breast milk for a nursing child.

44 (3) The term “undue hardship” shall mean an action requiring significant
45 difficulty or expense. The employer shall have the burden of proving undue hardship. In
46 making a determination of undue hardship, factors to be considered include:

- 47 (i) the nature and cost of the accommodation;
- 48 (ii) the overall financial resources of the employer; the overall size of the
49 business of the employer with respect to the number of employees, and the number, type,
50 and location of its facilities;
- 51 (iii) the effect on expenses and resources or the impact otherwise of such
52 accommodation upon the operation of the employer.

53 (d) The employer and employee shall engage in a timely, good faith, and
54 interactive process to determine effective reasonable accommodations to enable the
55 employee to perform the essential functions of the employee’s job. An employer may
56 require that the documentation about the need for reasonable accommodation come from
57 an appropriate health care or rehabilitation professional. An employee shall not be
58 required to obtain documentation from an appropriate health care or rehabilitation
59 professional for the following accommodations: (1) more frequent restroom, food, and
60 water breaks; (2) seating; and (3) limits on lifting over 20 pounds.

61 The appropriate professional in any particular situation will depend on the issue
62 related to pregnancy or related condition and the type of functional limitation it imposes
63 including duration. Appropriate professionals include, but are not limited to, doctors
64 (including psychiatrists), psychologists, nurses, physical therapists, occupational
65 therapists, speech therapists, vocational rehabilitation specialists, midwives, lactation
66 consultants, and licensed mental health professionals. An employer may require
67 documentation for any extension of the accommodation beyond the originally agreed to
68 accommodation. In requesting documentation, employers should specify what types of
69 information they are seeking regarding the accommodation, its functional limitations, and
70 the need for reasonable accommodation. The individual can be asked to sign a limited
71 release allowing the employer to submit a list of specific questions to the health care or
72 vocational professional.

73 (e) Written notice of the right to be free from discrimination in relation to
74 pregnancy and related conditions, including the right to reasonable accommodations for
75 conditions related to pregnancy or related conditions, pursuant to this subsection shall be
76 distributed in a handbook or other means to:

77 (1) new employees at the commencement of employment;

78 (2) existing employees within 120 days after the effective date of the law that
79 added this subsection;

80 (3) any employee who notifies the employer of her pregnancy within 10 days of
81 such notification.

82 (f) The commission shall develop courses of instruction and conduct ongoing
83 public education efforts as necessary to inform employers, employees, and employment
84 agencies, about their rights and responsibilities under this subsection.

85 (g) This subsection shall not be construed to preempt, limit, diminish or
86 otherwise affect any other provision of law relating to sex discrimination or pregnancy, or
87 in any way to diminish the coverage for pregnancy or a condition related to pregnancy
88 under section 105D of chapter 149, or any other special or general law.